

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RONALD DANDAR,	)	
	)	
Petitioner,	)	
v.	)	Case No. 1:11-cv-42-SJM-SPB
	)	
WARDEN KENNETH CAMERON,	)	
<i>et al.</i> ,	)	

**MEMORANDUM ORDER**

This petition for writ of habeas corpus was received by the Clerk of Court on February 16, 2011 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on June 8, 2011 [20], recommends that the Respondents' motions to dismiss ([8] and [19]) be granted, the petition for writ of habeas corpus be dismissed for lack of jurisdiction, and a certificate of appealability be denied inasmuch as the instant case represents a successive habeas petition as to which Petitioner has not obtained the mandatory authorization from the Third Circuit Court of Appeals, as set forth in 28 U.S.C. §2244(b). After the filing of the Report and Recommendation, Petitioner sought and received an extension of time – until July 29, 2011 -- within which to file his objections.

On July 27, Petitioner filed a document [27] lacking any caption and which is largely unintelligible. It was originally docketed as a motion seeking reconsideration of the Magistrate Judge's July 14, 2011 Order [26], which had denied Petitioner's motion for a telephonic hearing [23] and motion for permission to file a second or successive

habeas corpus petition [24]. This July 27 “motion” was then terminated and redocketed at a new number by the clerk of court as objections [28] to the Magistrate Judge’s June 8, 2011 Report and Recommendation. Having reviewed the Petitioner’s July 27, 2011 filing, this Court construes the document as an appeal to this Court of the Magistrate Judge’s July 14, 2011 Order described above, as well as a request to proceed with the appeal *in forma pauperis*.

Upon consideration of these matters, the Court concludes that the appeal should be denied and the Magistrate Judge’s July 14 Order affirmed, inasmuch as: (a) this action is one of multitudinous federal habeas corpus petitions filed by Petitioner in which he has challenged the sentence imposed upon him on February 6, 2004 by the Erie County Court of Common Pleas; (b) Petitioner has not received the requisite order from the Third Circuit Court of Appeals authorizing this Court to consider the instant habeas petition as set forth in 28 U.S.C. §2244(b)(3)(A); (c) as a result, this Court patently lacks subject matter jurisdiction over the instant action; (d) this Court lacks the authority to grant Petitioner’s request for permission to consider a second or successive petition, as the requisite authorization must come from the circuit court of appeals; and (e) in light of these facts, no benefit would be served by granting the Petitioner’s request for a telephonic conference.

To the extent Petitioner is seeking permission to appeal the Magistrate Judge’s order *in forma pauperis*, the request is moot, as Petitioner previously paid the applicable filing fee to commence this action and no additional fee is required to raise an appeal of the Magistrate Judge’s order before this Court. To the extent Petitioner’s request to appeal *in forma pauperis* relates to his appeal [11] previously taken to the Third Circuit

Court of Appeals on April 13, 2011 relative to this Court's April 7, 2011 Text Order affirming the Magistrate Judge's March 18, 2011 Text Order denying Petitioner's motion for recusal [5], the request is moot, as the Magistrate Judge previously granted petitioner's motion for leave to appeal to the circuit court *in forma pauperis* [10] in a Text Order dated June 17, 2011.

Accordingly, after de novo review of the petition and documents in the case, together with the Report and Recommendation and Petitioner's subsequent July 27, 2011 filing docketed as "objections" and construed herein as an appeal of the Magistrate Judge's July 14, 2011 order, the following Order is entered:

AND NOW, this 2<sup>nd</sup> Day of August, 2011;

IT IS ORDERED that the motions to dismiss filed by the Respondents in this matter ([8] and [19]) be, and hereby are, GRANTED, and the instant Petition for Writ of Habeas Corpus be, and hereby is, DISMISSED for lack of subject matter jurisdiction.

Inasmuch as jurists of reason would not find it debatable whether the petition is jurisdictionally barred by virtue of Petitioner's failure to obtain the requisite authorization pursuant to 28 U.S.C. § 2244(b), IT IS FURTHER ORDERED that no certificate of appealability shall issue.

In addition, upon consideration of the document filed by Petitioner on July 27, 2011 [28], which has been docketed by the Clerk of Court as "objections" and construed by this Court as an appeal from the Magistrate Judge's July 14, 2011 Order, IT IS ORDERED that said appeal is DENIED and the Order of the Magistrate Judge is

AFFIRMED. IT IS FURTHER ORDERED that Petitioner's request for leave to proceed *in forma pauperis* is DENIED as moot.

The Report and Recommendation of Magistrate Judge Baxter filed June 8, 2011 [20] is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN  
United States District Judge

Cm: Ronald Dandar  
AP-6933  
SCI Cresson  
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U.S. Magistrate Judge Susan Paradise Baxter